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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 DONALD R. HUENE,

11 Plaintiff,

No. 2:11-cv-2109 JAM KJN PS

12 v.  
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14 U.S. DEPARTMENT OF THE  
15 TREASURY, INTERNAL REVENUE  
SERVICE, et al.,

16 Defendants.

ORDER

17 \_\_\_\_\_/  
18 Presently before the court is plaintiff Donald Huene's "motion for limited  
19 reconsideration" of the court's findings and recommendations filed August 24, 2012,  
20 recommending that defendant Internal Revenue Service's motion for summary judgment be  
21 granted. (Dkt. No. 37.)<sup>1</sup>

22 In his motion, plaintiff does not object to the court's substantive findings and  
23 recommendations, but essentially requests reconsideration of the court's finding that plaintiff  
24 failed to appear at the hearing on defendant's motion for summary judgment in violation of E.D.

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26 <sup>1</sup> This action proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and  
28 U.S.C. § 636(b)(1).

1 Cal. L.R. 230(i). (Dkt. No. 37 at 1-2.) In his declaration in support of the motion for limited  
2 reconsideration, plaintiff explains that he believed that the motion for summary judgment was  
3 adequately briefed, that he left a voicemail for the undersigned's courtroom deputy stating that  
4 plaintiff would be available by phone if oral argument was necessary, and that he never received  
5 a phone call from the court at the time of the hearing on the number he left in the voicemail. (Id.  
6 at 3-4.) He acknowledges the court's attempts to contact him during the hearing, but states that  
7 an incorrect number must have been dialed. (Id. at 4.)

8           While the court accepts plaintiff's explanation of events, which appear to amount  
9 to an honest misunderstanding, there is no question that plaintiff failed to appear in violation of  
10 E.D. Cal. L.R. 230(i), which states that "[a]bsent notice of intent to submit the matter on the  
11 briefs, failure to appear may be deemed withdrawal of the motion or of opposition to the motion,  
12 in the discretion of the Court, or may result in the imposition of sanctions." In this case, the  
13 court never notified the parties that the matter was submitted on the briefs or that the hearing was  
14 vacated, and a party cannot unilaterally vacate a hearing. See also E.D. Cal. L.R. 230(g)  
15 ("Alternatively, the motion may be submitted upon the record and briefs on file *if the parties*  
16 *stipulate thereto, or if the Court so orders...*") (emphasis added). Furthermore, the court never  
17 authorized plaintiff to appear telephonically. In any event, the court did not recommend a grant  
18 of defendant's motion for summary judgment based on plaintiff's failure to appear, but instead  
19 proceeded to consider the merits of the motion, including plaintiff's opposition. Additionally,  
20 the court declined to impose sanctions for plaintiff's failure to appear. Therefore, there is no  
21 proper basis to amend the court's prior findings and recommendations.

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1                   Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that  
2 plaintiff's motion for limited reconsideration (dkt. no. 37) is DENIED.

3 DATED: September 6, 2012

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6 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE